



Application Decision

Accompanied site visit made on 8 September 2015

Hearing opened on 11 February 2016

by Heidi Cruickshank BSc MSc MIPROW

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 13 May 2016

Application Ref: COM 617

Ford Heath, Dorset

Register Unit No: CL 263

Commons Registration Authority: Dorset County Council

- The application is made under Section 16 of the Commons Act 2006 for consent to deregister and exchange common land.
 - The application is made by Barbara Kerin, Principal Solicitor for SITA UK Ltd¹, SITA House, Grenfell Road, Maidenhead, Berkshire, SL16 1ES.
 - **The release land** comprises 197,093 square metres of land south-east of the junction of Puddletown Road and Binnegar Lane.
 - **The replacement land** comprises 229,427 square metres² of land in three parcels to the south-east, south-west and west of the release land.
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Decision

1. The application to deregister and exchange common land at Ford Heath, Register Unit No. CL 263, is granted.

Procedural Matters

The application

2. The initial application submitted to the Planning Inspectorate was dated 5 September 2014 and was advertised in the Dorset Echo on 11 September. Subsequent amendments to the application, as written or by amended plans, were submitted to the Planning Inspectorate on 18 September 2014, 14 October 2014, 2 March 2015, 18 June 2015, 30 July 2015 and 30 September 2015. Following the hearing amendments were submitted, dated 18 February 2016. Unilateral undertakings were submitted to the Planning Inspectorate on 8 September 2015, 6 October 2015 and 18 February 2016, with the final signed version dated 20 April 2016.
3. I consider it unhelpful to use the period following publicising of the application in this way. As noted by the applicant there comes a point where objectors have differing opinions on the same issue; the applicant needs to decide where they stand, if unable to mitigate or mediate all matters. I would expect the consultation with interested parties to formalise and finalise the proposals such that the application as submitted to the Secretary of State is only subject to minor amendments. This reduces the potential for errors and possible prejudice to interested parties who may be unaware of later amendments.

¹ Name changed to SUEZ UK ENVIRONMENT LTD on 24 March 2016. I shall refer to the applicant as SITA within this decision

² 100 m² was added to the original area to ensure connection to the public highway from the replacement land.

4. This decision is taken by reference to the written application dated 14 October 2014, amended plans dated 18 February 2016 and unilateral undertaking dated 20 April 2016, along with all evidence in writing and arising from the hearing.

Choice of application procedure

5. East Stoke Parish Council ("the Parish Council") argued that it would be preferable for the application to have been made under section 38 of the Commons Act 2006 ("the 2006 Act") rather than section 16. The choice of procedure is one for the applicant and at the hearing it was confirmed that there was no intention to withdraw the application in order to make a further application under a different section of the 2006 Act. I must determine the application that is before me against the relevant criteria.

Site visit & Hearing

6. I carried out a site inspection of the release land and replacement land accompanied by a representative for the applicant and a number of parties, objecting to or having an interest in the application, on 8 September 2015. Following that site visit it was necessary for documents to be circulated for comment and further comments were received, with regard to a proposed unilateral undertaking, from Dorset County Council ("the County Council").
7. Taking account of the relevant matters raised throughout the application process, I decided that it was appropriate to call a hearing. I considered that this would ensure that all interested parties were properly aware of the proposal, given the changes to the application referred to above, and that I had all the relevant information to enable me to make an appropriate decision on this application.
8. I therefore held a public hearing into the application at the Dorset Golf and Country Club, Bere Regis, Wareham, on 11 February 2016. Due to discussions at the hearing there was a need to further update some documents relevant to the application. As I was satisfied that it was appropriate for those documents to form part of the decision process I concluded that they should be submitted, taking account however that they could not be produced immediately. In discussion with those present, I decided that the best course of action would be to adjourn the hearing, rather than close it, leaving the option to resume should the documents not be submitted as expected from the discussions. It was agreed that they would be circulated to allow comments, with the applicant retaining the right to final comment.
9. Following those exchanges of documents I was satisfied that there was no need to resume the hearing and so I closed it in writing on 6 April 2016³.
10. In relation to documents generally there were some concerns that perhaps not all had been seen. Whilst I understand there to have been some problems with online access, the County Council confirmed at the hearing that documents relating to this application were on deposit at their offices and SITA confirmed that they also had copies available to all parties throughout the process.
11. I cannot comment in relation to planning documents, however, a list of those which were submitted to me at the hearing was circulated so that everyone had a chance to access them and comment should they wish. I am satisfied,

³ The signed unilateral undertaking had been provided in draft format for comment prior to the closing of the hearing with the signed version submitted subsequently as agreed

given the long process from original application, and the calling of the hearing, that all parties have had the opportunity to access and comment on relevant documents.

Planning Application

12. At the time of this application, and the site visit, the planning application had not been determined. By the time of the hearing, this had been dealt with by the County Council under planning application No. 6/2015/0421. The minutes of a meeting of 10 December 2015 show that the Regulatory Committee resolved that planning permission for the proposed extension to Binnegar Quarry to form a new working area (Area B2) for the extraction of sand and gravel, the restoration to nature conservation and woodland at its lower level with importation of inert material as an aid to restoration and use of clay to restore area B1 at land east of Binnegar Lane and south of Puddletown Road through to land at the rear of Binnegar Hall, Binnegar, East Stoke, Wareham, be granted, subject to the fulfilment of certain planning conditions.

Reasons

13. Section 16(1) of the 2006 Act provides, among other things, that the owner of any land registered as common land may apply for the land ("the release land") to cease to be so registered. If the area of the release land is greater than 200m² a proposal must be made to replace it with other land to be registered as common land ("the replacement land").

14. I am required by section 16(6) of the 2006 Act to have regard to the following in determining this application:

- (a) the interests of persons having rights in relation to, or occupying, the release land;
- (b) the interests of the neighbourhood;
- (c) the public interest, which includes the interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
- (d) any other matter considered to be relevant.

15. The Department for Environment, Food and Rural Affairs (defra) *Common Land Consents Policy Guidance* published in July 2009 was updated in November 2015. Whilst the application was made under the earlier guidance I consider this decision must be taken by reference to the current *Common Land Consents Policy*⁴. This clearly sets out the policy objectives relevant to deregistration are that "...our stock of common land...is not diminished so that any deregistration of registered land is balanced by the registration of other land of at least equal benefit; and any use of common land...is consistent with its status (as common land)...".

Description of the area

16. Ford Heath ("the common") lies north of the A352, with a railway line south of the A352 and the River Frome a little further south of that. The land south of the A352 is designated as an Area of Outstanding Natural Beauty ("AONB"). To

⁴ PB 14079

the north the land rises from the A352 to a plateau crossed by Puddletown Road, which forms the northern boundary of part of the release land. Beyond the road the land falls away again towards the valley of the River Piddle or Trent. Binnegar Lane is situated just within the western boundary of the common, linking these roads. The rivers run east to the Wareham Channel, leading to Poole Harbour. The town of Wareham is within easy distance of the application land, with the village of Wool to the south-west. Properties in the immediate vicinity of the common, within East Stoke Parish, are generally situated along the roads, mostly to the north of the A352 and, to the east of the application area, south of Puddletown Road.

17. There are a number of mineral workings, quarries, or former mineral workings, in the general area. Land both north and south of Puddletown Road has been worked and is apparently in a process of reinstatement. Part of the common north of Puddletown Road, north-west of the application area, was subject of an Order of Exchange dated 9 October 2009. Apart from the quarries, the higher ground is mainly woodland and heathland, with agricultural land generally in the lower landscape.
18. Directly to the east of the site, adjoining part of the replacement land, is Worgret Heath Site of Special Scientific Interest ("SSSI"), noted in the Ecological Assessment ("EA")⁵, associated with the planning application, as a small area of heathland important for sand lizard, *Lacerta agilis*.
19. Stokeford Heath SSSI lies approximately 200 metres to the north-west and has a range of heath and mire plant communities plus invertebrate, reptile and bird interest. The SSSI's are part of the 'Dorset Heaths' Special Area of Conservation ("SAC") and the Dorset Heathlands Special Protection Area ("SPA"), with Stokeford Heath SSSI being part of the Dorset Heathlands Ramsar site⁶. The Dorset Heaths SAC is a composite of 37 SSSIs, with a range of habitats and plant species as well as southern damselfly *Coenagrion mercurial* and great crested newt, *Triturus cristatus*.
20. The SPA is described in the EA as a composite of 40 SSSIs, with breeding populations of nightjar, *Caprimulgus europaeus*, woodlark, *Lullula arborea*, and Dartford warbler, *Sylvia undata*, as well as wintering populations of hen harrier, *Circus cyaneus*, and merlin, *Falco columbarius*. The EA indicates that the citation for Stokeford Heath SSSI notes the presence of all three breeding species.

The release land

21. The part of the common affected by the application lies to the south-west of Puddletown Road. The north-westernmost section, which abuts the junction of Binnegar Lane and Puddletown Road, is part of the mineral working area, referred to as 'B1'. The application seeks a link from this area through Battery Bank to a clearing, which I understand to be a former mineral working area, with woodland to the east and south. The area of release land is 197,093 m².

The replacement land

22. The 229,427m² of replacement land is in three parcels. Parcel 1 lies to the west of Binnegar Lane, abutting in part the western boundary of the common. The northern section of this parcel is a former quarry and landfill area, now

⁵ Report to Raymond Brown Minerals and Recycling Ltd, 2015, Ward Associates

⁶ Wetlands of International Importance

capped and reinstated, with semi-natural woodland to the south. The southernmost area is a field, which had been harvested and was in stubble at the time of the site visit. An initial assessment of the biodiversity value of the replacement land⁷ ("IABV") noted self-sown vegetation in this field but I found there to be little obvious alteration from a general mono-culture at the time of my visit almost 18 months later; I am unclear whether there had been further cropping or whether the land had remained fallow in that period.

23. Parcel 2 lies to the east of Binnegar Lane, adjoining the existing common and is a semi-improved grassland, apparently maintained by grazing by Sika deer, *Cervus nippon* ("deer"). This is most noticeable near the field edges, where they are close to shelter offered by the woodland. Parcel 3 is to the south-east of the release land, adjoining the common with the rear of the properties along the A352 on the southern boundary. This is similar to Parcel 2, being grass at the time of the site visit, although had apparently been sown with barley prior to the 2014 IABV. There is woodland on the margins and noticeable grazing by deer.

Assessment

The interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it)

24. There are no rights of common recorded in the Register of Common Land and no claim has been made that there are any unrecorded rights of common.
25. The applicant is the landowner and I am satisfied that their interests would be met by the granting of the exchange, without which they would be unable to implement the proposed extension to Binnegar Quarry, the new working area for which is part of the release land.
26. The intended occupier of the land is part of Raymond Brown Minerals and Recycling Ltd ("RBMR"), the quarry operator in relation to that part of the common land south of Puddletown Road currently being worked. Like the landowner, their interests would be served by the granting of the exchange, without which they would be unable to quarry the land. They indicate that six employees would be directly affected if the quarrying could not proceed, as the existing quarry area, B1, is reaching exhaustion.
27. I consider that the application is in the interests of the landowner and the occupier of the land, with no indication of other rights. Public rights of access will be dealt with separately.

The interests of the neighbourhood

28. Parcels 1 and 2 lie directly north of residential and business properties situated on the A352, within the parish of East Stoke. Although there was some disquiet regarding the introduction of public access at the rear of the properties, the Countryside and Rights of Way Act 2000 set out that "excepted land", as defined in subsection (2) and Schedule 1 to the Act, is not treated as access land. Paragraph 3 of Schedule 1 sets out that excepted land includes that within 20 metres of a dwelling. As a result, I am satisfied that the general public will not have a right to be within this close proximity to the properties. This will be physically and psychologically reinforced by the ditches to be constructed on the southern boundaries of these parcels of land.

⁷ Report to SITA UK LTD, June 2014, Ward Associates

29. I also agree with the applicant that the location of the bridleways on the northern and western sections of the release land will tend to encourage users to follow those routes, which are generally away from the properties. I recognise that the entrances to the land parcels, off the A352 and Binnegar Lane, are closer to properties but consider access must be available at some point to the south of the land, as this is where most of the local properties are. It is to be expected that most use of the new access land, and associated access points, is likely to be by those living or staying in the immediate vicinity.
30. I consider that there will be a positive benefit to local residents in providing a legal right for access onto land which it seems some have been using anyway either with permission or by trespass. Given its proximity to the properties this will be of greatest benefit to those living closest. There will also be a benefit in linking from this area to the remaining common land to the north, which otherwise can only be legally reached via Binnegar Lane to the west or a footpath to the east. I heard that some people place particular value on being able to have access on this land, currently in restoration from former quarrying, and so improvements in the ease of access will be beneficial.
31. There will be an overall increase in the area of common land as a result of the exchange and I consider that the proposed replacement land adds something that will positively benefit the neighbourhood.

The public interest

Nature Conservation

32. An Environmental Statement⁸ ("ES") was prepared to accompany the planning application. The associated EA involved habitat and species surveys over three years, with the main findings being:
- (i) Low populations of common reptiles are likely to be present on the site⁹ margins. The habitat of the site is not suitable for European Protected Species;
 - (ii) Dormouse is not likely to be present on the site;
 - (iii) No badger setts have been found;
 - (iv) The woodlands have limited birdlife reflecting the dominance of conifers and rhododendron, although some birds are present throughout including blackcap and chiffchaff;
 - (v) The open grassland (previously worked area) is used for feeding by green woodpecker, pied wagtail, and thrush. Nesting woodlark are not present;
 - (vi) Surveys for bats have been carried out and no roosts have been found;
 - (vii) The proposed extraction site contains a population of pennyroyal, *Mentha pulegium*, confined to a temporary pool area within the previously worked area. It is proposed that the pennyroyal will be transplanted into the recently cleared land immediately to the north as agreed with the County Ecologist and it is considered that it will take readily.

⁸ The non-Technical Summary indicates it is prepared by Stephen Bowley Planning Consultancy, July 2015

⁹ Note that the site under consideration within the ES relates to the planning application area, including the release land, but not the entirety of the land to which this decision relates

33. In relation to 32(iv) a local resident indicated that he had seen hobby, *Falco subbuteo*, in the woodland. RBMR indicate that they were not recorded during the EA bird surveys, which the report shows were carried out in April, May and June, when hobbies are present in the British Isles. There is no evidence before me that this species is nesting in the release land.
34. Pennyroyal is protected under Schedule 8 to the Wildlife and Countryside Act 1981 and has been found adjacent to the temporary pool sited within the release land. Mitigation is proposed, through transplantation onto the nearby common land, and will be managed through the Integrated Management Plan ("the IMP") associated with the planning permission.
35. Concerns were raised that the IMP relating to Parcels 2 & 3, provided following the hearing, may not be part of the existing IMP relating to the planning process. The applicant indicates that the IMP will be an addendum to the original, to avoid 2 IMPs covering similar land under two different regimes. I agree with Natural England ("NE") that there may have been the opportunity to include unaffected common land and also with the Parish Council that dates and/or version control would make the IMP clearer. However, I consider that the management procedures are for those who must implement them and so I deal no further with this point.
36. The EA fairly indicates that the impact of the loss of land would have a negative effect on the flora but notes specific mitigation measures, including the creation of the following habitats in the restoration scheme;
- (i) Broad-leaved woodland/Scrub;
 - (ii) Acid grassland/heathland;
 - (iii) Water bodies;
 - (iv) Pennyroyal receptor area.
37. The IABV found there to be reasonable biodiversity value in relation to the landfill site, which is the northern section of Parcel 1. However, the remaining land, with the exception of boundary trees, was noted to have low biodiversity value, unlikely to alter due to the registration process alone. I consider this to provide a fair assessment of the nature conservation value of this land.
38. I referred at the hearing to the number of deer currently making use of at least parts of both the release and replacement land. During the September site visit, they were seen during the day both within the woodland and in the clearing south of Battery Bank, which is a formerly worked area. In the late afternoon prior to the hearing I drove around the general area and noted large numbers of deer within the field north of the A352, Parcel 3. A local resident confirmed they are regularly seen grazing this land.
39. I note the concerns that the works may lead to movement of the deer, particularly to the south, which could impact on road users, as well as the deer themselves, should this lead to accidents and could also impact agricultural land further south. This has not been specifically referred to in the EA or the IMP, although the importance of the deer grazing and trampling to maintain the open aspect of the habitat which assists other species, for example, the pennyroyal, has been noted. I believe that some deer movement is inevitable. Whilst I am not able to place a condition on the works, as this is a matter relating to the planning rather than the exchange, I suggest that the IMP takes account of potential impact on heavily pregnant does and very young fawns in

- the period late April – early July, such that inappropriate works within the woodland itself are not undertaken at this time.
40. In relation to Parcel 1, the intention was for an informal footpath to be provided on the top of the restored land to the north. However, NE indicated that this area was used by woodlark, which as a ground nesting bird was at particular risk of disturbance from walkers and accompanying dogs. It was agreed that the applicant would look into the possibility of putting this route around the base of the restored area and this is shown in drawings SIT-BIN-COM-001/0, 18 February 2016 and SIT-BIN-COM-002/1, 18 February 2016. I am satisfied that whilst the public will have a right of access over the whole of Parcel 1 the identification of a specific trail, in conjunction with information boards, which can be used to stress the importance of the area to these birds at particular times of the year, should allow appropriate management of this part of the replacement land, the northern section of Parcel 1.
 41. Although I am satisfied that there will be mitigation to protect the pennyroyal, which is situated within the release land, the mitigation makes use of the existing common land to the north of the site, such that the replacement land does not provide any gain to this protected species. On balance, I consider that the importance of the species is such that the mitigation location is not a factor to weigh against the exchange. Nonetheless, I am concerned that in relation to the majority of the replacement land, the southern section of Parcel 1 and the whole of Parcels 2 and 3, there is limited intention for improvements to be made to the nature conservation value of the land.
 42. The Parish Council have argued strongly for the retention of these areas as agricultural land, being concerned that this may become scrub or heathland, and this has led to the applicant moving away from the key consideration, identified in the original application, that *"...converting the fields to a species-rich habitat area would provide potential benefits for nature conservation and would link well with the surrounding habitats"*. The October 2014 amendment stated that *"...the fields will be topped annually to remove weeds and only an annual grass/hay crop would be taken. It is anticipated that with less intensive farming, the fields will most likely become more species rich habitat."*
 43. NE drew attention to the defra policy objective under the 2006 Act to improve the contribution of common land to enhancing biodiversity and conserving wildlife. In order to achieve this objective, the consent process seeks to ensure that the stock of common land and greens is not diminished so that any deregistration of registered land is balanced by the registration of other land of at least equal benefit. I agree with NE that the condition of the majority of the replacement land does not meet this objective and the apparent intention to continue with the existing tenancy arrangements, with no biodiversity objectives, will not improve the replacement land in this respect.
 44. Whilst there is understandable concern, not only from the Parish Council, at the loss of agricultural land, it was also noted that the loss of heathlands and habitats has a potential impact on tourism, due to alterations to natural beauty, and that this is a major income generator in the area. There was mention of the loss of other agricultural land in the area to solar farms, however, the National Planning Policy Framework expects local planning authorities to take into account the economic and other benefits of the best and most versatile agricultural land, which are Grades 1, 2 and 3a by reference to the Agricultural Land Classification system and the County Council indicated

that this should result in some protection to higher grade land. I understand the replacement land to be graded 3b and 4.

45. In weighing the agricultural value of the land against the need to offset the biodiversity loss in relation to the release land I am not satisfied that the continuation as agricultural land, with no additional biodiversity measures, is appropriate. I do not consider that sufficient account has been taken of the biodiversity matters in relation to the replacement land.

Conservation of the landscape

46. The exchange of land will allow the implementation of the planning permission, which will lead to landscape changes, with the removal of woodland in the release land. The Landscape and Visual Impact Assessment¹⁰ ("the LVIA") notes that the site, which is the release land, is well screened, being substantially enclosed by mature woodland and dense heathland scrub vegetation, situated in a generally rural landscape with significant variations in topography and character. It was noted that there is potential for views into the site from the adjacent common land.
47. The IMP sets out the requirement to "*ensure that appropriate visual screening is maintained for the duration of the working of the quarry and into the long term by maintaining the integrity of the wooded hillside in views from the south (in particular views from the AONB), retaining the wooded ridge line in easterly views from Binnegar Lane and retaining a robust woodland belt around the perimeter of the proposed extraction area.*"
48. In addition there will be diversification of the woodland border by removal of rhododendron in agreed locations, whilst maintaining or establishing a dense shrub layer on the woodland edges to preserve and reinforce the visual barrier around the proposed extraction areas. I consider that this will assist in the conservation of the landscape.
49. In general I am satisfied that the LVIA, which was focussed on the planning permission site rather than the wider area I need to consider, correctly identifies that the landscape impact of the extraction process will be low in the wider landscape setting. I consider that the provision of new planting and the subsequent management for nature conservation interest is likely to have a major beneficial impact in the medium to long term.
50. However, in relation to entirety of the land which I need to consider, I agree with NE that improvements could be made to the replacement land to extend the woodland south, improving the visual aspect. I consider this would also be a positive biodiversity action, introducing appropriate species and numbers; providing some shelter for the deer, which may be displaced; and extending the woodland area in Parcel 1, which would be of benefit to a number of species including bluebells, *Hyacinthoides non-scripta*. I note that one objector referred to the planting of oaks in this area to attract nightjars, absorb excess water and soften the appearance of the area. I believe that this would also be in agreement with the Dorset Landscape Character Assessment key land management recommendations, referred to in the LVIA.
51. On balance, I consider that the conservation of the landscape will be achieved through the planning processes and the IMP. However, I believe further

¹⁰ Prepared for Raymond Brown Minerals & Recycling Ltd by Corylus Planning & Environmental Ltd, June 2015

enhancements could be made and, as the IMP is a living document, these could be managed by this mechanism.

Protection of the public rights of access to any area of land

52. I consider it unsatisfactory that the existing common land south-east of the junction of Binnegar Land and Puddletown Road appears to have been closed off to public access in order for quarrying to take place, with access even outside the directly quarried area discouraged by misleading signs. The apparent failure to remove such signs between the date of the site visit and the hearing, when an NE officer noted their presence, is disappointing. It was clear from the hearing that even local residents were unsure of their rights to access certain land.
53. A larger area of replacement land is offered through the exchange and, apart from the northern section of Parcel 1, it is generally more conducive to public access than the release land, being comparatively level due to its location and former agricultural activity. The other advantage is that it is closer to the local population, who are most likely to be those making greatest use of the asset.
54. As I have noted with regard to the neighbourhood, I consider that there is an improvement for those wishing to use the common for recreation and access, with more joined up areas and the addition of bridleways, which will allow access to horse riders and bicyclists. Part of the package of proposals includes the provision of a bridleway continuing north-east from Parcel 1 over the common land, which is unaffected by the exchange application. This will link to another bridleway¹¹ on the north side of Puddletown Road and greatly increase the wider access opportunities. The proposed box gate accesses, provided that they meet appropriate standards¹², will be in line with the Equality Act 2010, also allowing access for people with a wider range of abilities.
55. The provision and dedication of the bridleways is to be achieved by way of the unilateral undertaking. I have given careful thought to the concerns raised by the County Council as to the appropriate width for the bridleway within the common land to the north-east. There was some concern that the 4 metres proposed would be detrimental to smooth snakes, *Coronella austriaca*, and sand lizards, both of which are protected species under the Wildlife and Countryside Act 1981, and the EC Habitats Directive 1992, which is implemented in Great Britain by the Conservation (Natural Habitats &c.) Regulations 1994.
56. As this section is outside the area with which this application is directly concerned, my comments are no more than advisory, however, NE advised that they were less concerned about the width of the bridleway and associated box access, provided that the works were carried out at the appropriate time of year. Taking that expert advice available to me at the hearing, and also taking account of the arguments raised as to potential conflict for users if a lesser width is implemented, I consider that a 4 metre width is likely to be appropriate. It will remain for the applicants to determine, in consultation with the appropriate bodies, whether the proposal is a development, affecting such European Protected Species, that it requires a licence from the Department for Environment, Food and Rural Affairs to derogate from the protection afforded to these species under the provisions of the 1994 Regulations.

¹¹ Not to be dedicated as a public right of way under the unilateral undertaking before me

¹² British Standard, BS5709:2006

57. A proposal put forward by the Open Spaces Society ("the OSS") was for public parking spaces to be provided to the west of Binnegar Lane, in association with Parcel 1, and to the south of Puddletown Road, close to the box access for the bridleway on the area of common not directly affected by this application. I take account of the concerns raised by NE about such works in the proximity of the protected species mentioned discussed and consider that the applicant was correct to remove the proposal off Puddletown Road. I also note the discussion regarding the possibility of provision of an alternative parking area to the south-east of the junction of Binnegar Lane and Puddletown Road in B1. Whilst this seems sensible, it remains a separate matter which would need to be dealt with at a later date and so I have given no weight to that proposal in relation to the application before me.
58. There has apparently historically been informal parking in the area off Binnegar Lane, within Parcel 1. Although I acknowledge the concerns of some local residents that this may encourage visitors, there is a desire from others to promote local tourism. I agree with the OSS that such provision is appropriate, even if just for residents of the parish who do not adjoin the site, and will also add to the enjoyment of the wider public. NE suggests that the area could look to accommodate up to 6 cars, at least until parking is available at B1, rather than the suggested 3 – 4 car space. I consider that it is sufficient for me to agree at this stage to the principle that parking will be provided, for a minimum of 3 – 4 cars, as part of the application and for the precise detail to be dealt with subsequently by the relevant authorities. I note the view of the County Council that the parking may require planning permission and consider that a separate matter on which the applicant needs to be satisfied.
59. Whilst I was told of concerns of local residents that their private parking areas might be used for access to the southern section of the bridleway accessing onto Binnegar Lane, this remains a matter to be resolved by the appropriate authorities should it arise. I consider that the provision of formal parking off Binnegar Lane will encourage people to use that area, rather than attempt to park in what had every appearance to me of private areas, even though not signed as such.
60. I note the concerns regarding access onto the A352 by horse-riders, with comments as to where they may be able to go to and from. The County Council, who are the highway authority, have not objected to the proposed box accesses onto this road. Whilst it may be that horse-riders will choose not to access the road itself, due to limited on-going access, the provision will allow use by cyclists as well as others with more particular needs, such as those with pushchairs, wheelchairs or trampers¹³.
61. The East Stoke Parish Plan¹⁴ refers to the goal to convert the current footway alongside the A352, which runs from Binnegar Lane to the Stokeford Inn, to a combined footway and cycleway to provide a safe link route for cyclists. This also links to the bridleway and, as it is within the Parish Plan as an aspiration to increase local tourism, may be a desire which can be met in the future. I do not consider the suggestion of phased access, initially on foot depending on later provision of access connections, is reasonable. The bridleways will provide immediate access to those otherwise prevented, for whatever reason, by physical barriers, such as stiles.

¹³ All terrain mobility vehicles

¹⁴ Update East Stoke, The Parish Plan, Prepared by the Steering Committee, April 2006

62. There were concerns that potential agricultural access onto the land would be affected by, and would affect, the public access and access points. A landowner can authorise vehicular use over public rights of way, but remains responsible for ensuring that any damage is made good. Drivers would be under a duty of care to members of the public using a right of way. To address the concerns of the Parish Council I note that the applicant intends to provide a gate for such access off Binnegar Lane in any case.
63. There is clearly an issue with illegal motorbike scrambling in this area; by the time of the hearing there were new notices and barriers on the land relating to this matter. I heard that SITA, RBMR and the Parish Council have a police liaison group to deal with this, as well as other relevant matters, with RBMR having an office manned throughout the day. These access issues already exist and I do not consider that the application will have a direct bearing. Management will be needed of the additional access points, to ensure that these are not abused, but I do not consider that fear of illegal access by a minority, which can be dealt with by the appropriate authorities, should prevent legitimate access by the majority.
64. Taking all matters into account, I consider that the public rights of access are improved by the proposals arising from the application.

The protection of archaeological remains and features of historic interest

65. A Cultural Heritage Assessment¹⁵ ("the CHA") looked at the direct and indirect effects upon cultural heritage. The key cultural assets in the vicinity of the site, focussed on the release land, are Battery Bank - a linear earthwork - and two barrows (or tumuli), which probably date to the late prehistoric period and are protected as scheduled monuments.
66. With the exception of the already breached section of Battery Bank, which has been used historically by quarry traffic and will form the access from the existing workings to the proposed, these features lie outside the application land. The CHA indicates that there would be no adverse direct effects upon these scheduled monuments but that the nature of mineral extraction results in the total loss of the archaeological resource wherever extraction takes place, and potential loss or damage in other areas.
67. The indirect impact upon the setting of the scheduled monuments during extraction and restoration is noted; however, the working boundary and restoration design have been amended following discussions with Historic England. The IMP includes the ongoing protection for the scheduled monuments for the duration of the works, restoration and aftercare period, with specific measures in place to improve the setting for the barrows.
68. The CHA noted that there were no known features of cultural heritage interest that would be directly affected within the release land. I understand from the Parish Council that subsequently a World War 2 Auxiliary Unit bunker has been found. The applicant indicates that notification of the discovery has been given to the County Council, in line with planning conditions and the watching brief set out in the ES.
69. I agree with the CHA that the effects upon archaeology, including the indirect effects upon the setting of such features, will be negative and permanent. However, taking appropriate account of the IMP, including the survey of newly

¹⁵ Commissioned by Raymond Brown Minerals & Recycling Ltd from Andrew Josephs Associates, June 2015

discovered cultural assets, I am satisfied that the overall effect provides an appropriate balance in this case. I would not expect the recording of the replacement land as common land to have any adverse impact upon any other unknown cultural heritage assets.

Other matters

70. The applicant is committed to ensure that, once the quarrying operations are complete, and the quarry restored, the release land will be re-dedicated as common land. Quarrying activities will be completed within fifteen years and area restored to appropriate condition within twenty years. The unilateral undertaking was revised to include such re-dedication.

Summary

71. As set out in the guidance, the primary objective in determining applications under section 16(1) is to ensure the adequacy of the exchange of land in terms of the statutory criteria. Therefore, even where an applicant makes an otherwise compelling case for an exchange, the Secretary of State's expectation will be that the interests (notably the landowner, commoners, and the wider public) will be no worse off in consequence of the exchange than without it. Evaluation of the exchange is made in terms of both quality and quantity; an inadequate exchange will seldom be satisfactory, whatever the merits of the case for deregistration might otherwise be.
72. In this instance, I am satisfied that the landowner's interests are positively provided for by the exchange; without it they cannot allow the implementation of the planning permission. I understand that the continuation, or not, of the mineral workings in this area has a direct impact on six employees of RBMR. There are no commoners affected and therefore I need to look at the wider public interests.
73. I consider that there is a positive benefit in terms of public access, providing an area of common land close to the residential area, which links directly to the remaining common land to the north-east. In addition, there is positive provision for users other than walkers, with links for higher right users continuing through the remaining common land and to the north over Puddletown Road. The other positive is the intention, set out in the unilateral undertaking, to re-dedicate the release land at the end of the restoration. This will ultimately result in a large block of common land on the edge of the AONB and close to important sites for nature conservation.
74. Whilst there are some negative implications for the landscape and archaeology, in general I am satisfied that the IMP addresses these matters appropriately, although I have made some suggestions on certain matters.
75. I am not satisfied that sufficient attention has been given to the nature conservation aspect of this application, with focus being given to the view of the Parish Council to retain agricultural land, rather than to the views of NE in increasing biodiversity on the replacement land. I note that the land is only part of an agricultural holding and, therefore, is unlikely to be significant in terms of employment in the local area in comparison to the mineral workings.
76. I have given great consideration as to whether to dismiss this application on this basis. I am not able to place conditions on the exchange to ensure that the biodiversity aspects are properly dealt with and, if I were to reject the

application, it would be open to the applicant to make a further application, with an appropriate management plan in place to resolve this point.

77. On the other hand, I consider that the benefits of the improved public access to wider users, combined with the re-dedication of the release land, both of which are protected by the unilateral undertaking, gives rise to a positive package overall. This will result in a vibrant common area, with space for conservation and access, enhancing local landscape and tourism opportunities, even if this will not be realised in full until fifteen to twenty years from now. For this reason, I consider it appropriate to step outside the guidance, although I would urge the applicant to seek and act upon advice from NE on the appropriate management of the release land, in line with its new status as common land.

Other matters

78. I understand that some local residents oppose the development of the quarry but that matter is not directly before me, relating to the planning permission already granted. A number of the matters raised, including claims of actions taken outside of agreed working practices or lack of appropriate care for wildlife, should be directed to the relevant authorities.
79. Concerns as to possible changes to agricultural support payments are not a matter for me.
80. I was informed that Binnegar Hall, which is situated off the A352, generally to the south of the land under consideration, is in the process of a planning application for conversion to homes. Such matters are not relevant to my consideration.

Conclusions

81. I consider that granting the application would be in the interests of the owners and occupiers of the release land. I am satisfied that the interests of the neighbourhood are positively met, but there are some neutral and negative effects on the public interest, as well as some positives with regard to rights of access. Overall, placing weight on the unilateral undertaking, I am satisfied that the long-term advantage is of benefit the public overall in terms of the common land area, accessibility improvements and biodiversity potential.
82. Having regard to these and all other matters raised in the written representations, and to the criteria in section 16(6) of the 2006 Act, I conclude, therefore, that the application should be granted and an Order of Exchange should be made.

Heidi Cruickshank

Inspector

APPEARANCES

Mr G Phillips	SITA UK Ltd
Mr P Crowther	Legal & Democratic Services, Dorset County Council
Mr S Cornwell	Planning Officer, Dorset County Council
Mr B Quinn	East Stoke Parish Council
Ms N Harper	Natural England
Mr A Nicholson	Natural England
Mr R Holmes	Open Spaces Society
Ms C Brooks	Purbeck District council
Mr S Cole	Raymond Brown Minerals and Recycling Ltd
Ms R Ham	
Mr B Milton	
Mr P Redl	
Mr B Willgress	

DOCUMENTS

- 1 Regulatory Committee Minutes, 10 December 2015
 - 2 Section 106 Agreement, 15 February 2010
 - 3 Integrated Management Plan (IMP) Binnegar
 - 4 Statement of Phil Redl
 - 5 Copy e-mail, Dorset County Council/Natural England, 21 January 2016
 - 6 Aerial photograph with Natural England suggestion of Parcel 1 route
 - 7 Memory stick with relevant documents
 - 8 Post-hearing documents from SITA
 - 9 Comments on post-hearing documents
 - 10 SITA final response to comments
 - 11 Unilateral Undertaking, 20 April 2016
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Order

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17(1) and (2) of the Commons Act 2006, **I HEREBY ORDER** Dorset County Council, as commons registration authority for the area in which the release land and the replacement land are situated:

- (a) to remove the release land from its register of common land, by amending register unit CL 263 to exclude the release land; and,
- (b) to register the replacement land as common land, by amending register unit CL 263 to include the replacement land.

First Schedule – the release land

Colour On Plan ¹⁶	Description	Extent
Edged red	Land forming part of common land known as Ford Heath, register unit CL 263, lying to the south of Puddletown Road and east of Binnegar Lane, East Stoke Parish, Dorset. The land comprises an area of mineral workings, a link section through the alignment of Battery Bank, an area of former mineral working, forming a clearing, and woodland.	197,093 m ²

Second Schedule – the replacement land

Colour On Plan	Description	Extent
Edged dark green	Parcel 1, land to the west of Binnegar Lane, which is former landfill, woodland and field; Parcel 2, land to the east of Binnegar Lane, which is a field; and, Parcel 3, land to the north of the A352, which is a field. All three parcels of land partly abut remaining areas of common land, Ford Heath, register unit CL 263.	229,427 m ²

¹⁶ Release and Replacement Land, Drawing Ref SIT-BIN-COM-001/1, 18 February 2016